

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
EL DORADO DIVISION

GLORIA A. WILLIS

PLAINTIFF

VS.

CASE NO. 04-CV-1106

PILGRIMS PRIDE CORPORATION

DEFENDANT

ORDER

Before the Court is the Report and Recommendation filed on September 5, 2006, by the Honorable Bobby E. Shepherd, United States Magistrate Judge for the Western District of Arkansas. (Doc. No. 53). On September 18, 2006, the Plaintiff filed objections to the Magistrate's Report and Recommendation. (Doc. No. 54). The matter is now before the Court for *de novo* review from which the report will be accepted, rejected, or modified in whole or in part pursuant to 28 U.S.C. §636(b)(1).

This action is a Title VII lawsuit against Pilgrim's Pride Corporation alleging that Pilgrim's Pride discriminated against the Plaintiff in violation of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e *et seq.* On January 13, 2006, the Plaintiff filed a motion for appointment of counsel in the case. The motion was referred to Magistrate Judge Bobby E. Shepherd on January 23, 2006. On January 25, 2006, Judge Shepherd denied the Plaintiff's motion finding that Plaintiff did not meet the standard necessary for the court to request that an attorney assist her. (Doc. No. 24). On February 24, 2006, Plaintiff filed a notice of appeal for the magistrate's denial of her motion. (Doc. No. 32). Plaintiff also filed a motion for leave to appeal as a pauper and a completed IFP application. (Doc. No. 34). This motion was referred to

Judge Shepherd, pursuant to 28 U.S.C. §636(b)(1)(A) and Rule 72.1, Rules of the United States District Courts for the Eastern and Western Districts of Arkansas on March 28, 2006. (Doc. No. 36). In his Report and Recommendation, Judge Shepherd found that the Plaintiff is unable to pay the filing fee for this appeal, however, he found that the appeal was not taken in good faith as required by 28 U.S.C. §1915(a)(3). Therefore, it was recommended that the Court deny Plaintiff's application to proceed *in forma pauperis* (IFP) on appeal of this motion and direct Plaintiff to pay the full filing fee of \$255.00¹ or renew her application to proceed IFP with the United States Court of Appeals for the Eighth Circuit. Plaintiff argues that she was under great stress, and suffers from an overwhelming chronic illness and mental disorder, therefore, counsel should have been appointed on her behalf.

Plaintiff is seeking to appeal the magistrate's order denying her appointment of counsel. While Plaintiff may file an immediate appeal of the denial of such a motion, such an appeal must be taken in good faith in order for it to be taken in forma pauperis. 28 U.S.C. §1915(a)(3) provides that "[a]n appeal may not be taken in forma pauperis if the trial court certified in writing that it is not taken in good faith." The grounds stated by Plaintiff in support of her motion for appointment of counsel—stress and inability to understand her legal rights— were considered by the magistrate. It was determined that the Plaintiff had the ability to adequately present her claims to the Court without assistance of counsel. The Court agrees. Although unsuccessful in her claim against the Defendant, Plaintiff demonstrated the ability to adequately presented her case to this Court. Appointment of counsel was, therefore, unwarranted in this case. Accordingly, the Court finds that this appeal is not being taken in good faith and

¹ Plaintiff's notice of appeal was filed before the appellate filing fee was increased on April 9, 2006. Therefore, Plaintiff is only required to pay the filing fee which was applicable at the time her notice of appeal was filed—\$255.00.

Plaintiff's application to proceed IFP on appeal should be denied.

For the reasons set forth above, the Court adopts the Magistrate Judge's Report and Recommendation. Accordingly the Plaintiff's application to proceed IFP on appeal (Doc. No. 34) is hereby **denied**. . Plaintiff is directed to pay the full filing fee of \$255.00² within one month from the date of this order or renew her application to proceed IFP with the United States Court of Appeals for the Eighth Circuit.

IT IS SO ORDERED, this 10th day of October, 2006.

/s/Harry F. Barnes
Hon. Harry F. Barnes
United States District Judge

² This is the filing fee applicable on February 24, 2006, the date Plaintiff filed her Notice of Appeal.